

9

(1)

Single Bench

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR,  
CHHATTISGARH**

**CRIMINAL APPEAL NO. 944/2004**

**APPELLANT**

: Munna @ Govind Ram, aged  
about 32 years, S/o. Shri  
Dashrath, Occupation:  
Labourer, R/o. Village  
Lunhga, Police Station  
Jagdalpur, District Bastar,  
Chhattisgarh

**VERSUS**

**RESPONDENT**

: State of Chhattisgarh,  
Through: SHO,  
Police Station Narharpur,  
District Kanker,  
Chhattisgarh.

**APPEAL UNDER SECTION 374(2) OF THE CODE OF  
CRIMINAL PROCEDURE**

3362/04  
14/10/04  
Sanjay Kumar  
D.D.R. (U)  
14/10/04

Copy  
14/10/04

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Cr. Appeal No.944/2004****Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh****Munna @ Govind Ram****Vs.****State of Chhattisgarh****PRESENT: -**

Shri Ranbir Singh Marhas, learned counsel with Shri Sourabh Dangi, counsel for the accused-appellant.

Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

**ORAL JUDGMENT****(Delivered on 08-03-2006)**

This appeal is directed against the judgment dated 07-10-2002 delivered by Shri M.S.Qureshi, IIInd Additional Sessions Judge (F.T.C.), Kanker in Sessions Case No.292/1999 whereby the appellant was convicted under Section-376 of IPC and was sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.10,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 20 months.

2. Briefly stated the prosecution story is that on 19-05-1999 at about 10 A.M., the prosecutrix, aged about 28 years had gone to the forest to collect firewood. Finding her alone, the appellant came there, pushed her on the ground and mounting himself upon her committed

rape on her and ran away. The prosecutrix started crying and while returning home, narrated the incident to Ashok Kumar PW-2, Bhagirathi PW-3, Ajit Kumar PW-6 and Rajlal PW-11. The prosecutrix also narrated the incident to her mother Sukma Bai PW-7 on reaching home. On the same day at 2.05 P.M., F.I.R. Ex.P-11 was lodged in Police Station-Narharpur, Outpost-Dudhawa by the prosecutrix who was sent for medical examination. Dr. Hemlata Sahu, PW-12 found an abrasion on her back. Upon internal examination, she found that the hymen had an old tear and two fingers could be inserted with difficulty inside the vagina. No definite opinion could be given about the rape having been committed on the prosecutrix.

3. Dr. Sushil Kumar Gupta PW-4 who examined the accused on 20-05-1999 found that the accused-appellant was capable of performing sexual intercourse. Vaginal slide prepared by Dr. Hemlata Sahu PW-12 along with one pink skirt and red coloured nylon chaddi of the prosecutrix seized vide Ex.P-4 and one yellow coloured nylon underwear belonging to the accused seized vide Ex.P-3 were sent for chemical analysis to the Forensic Science Laboratory, Raipur. Vide report Ex.P-10, presence of semen and human spermatozoa was confirmed on all the abovementioned articles though the seminal stains were found insufficient for serological examination.

4. After completion of investigation, the appellant was prosecuted under Section-376 of IPC. The appellant abjured the guilt. The prosecution examined as many as 13 witnesses. The prosecutrix could not be examined since she had become mentally retarded. Dr. R.K.Chandrawanshi was examined as a Court witness and after examining the prosecutrix in Court testified that she was completely mentally retarded and was unable to make a statement. No evidence was led by the appellant. The learned trial Judge relying upon the evidence of Ashok Kumar PW-2, Bhagirathi PW-3, Ajit Kumar PW-6 and Rajlal PW-11 relating to res gestae under Section-6 of the Evidence Act and also on extra judicial confession made by the appellant before Preetam Ram PW-1 convicted and sentenced the appellant as aforesaid.
5. Shri Ranbir Singh Marhas, learned counsel for the appellant has assailed the impugned judgment on the ground that the prosecutrix was not examined in this case. He has further contended that the testimony of Sukma Bai PW-7, mother of the prosecutrix clearly negatives the allegation of rape levelled against the appellant. It was also contended that since the appellant was a married person, presence of semen and human spermatozoa on the underwear seized from the appellant was of no consequence in this case. He also

drew my attention to para-10 of the impugned judgment in which the trial Court has observed that in view of old tear found in the hymen, the prosecutrix was habitual of sexual intercourse. Therefore, the presence of semen and human spermatozoa on the petticoat, underwear and vaginal slide of the prosecutrix could not by itself establish the guilt of the appellant beyond all reasonable doubt. On the other hand, Shri Ashish Shukla, Govt. Advocate has argued in support of the impugned judgment.

6. Having considered the rival contentions, I have perused the record of Sessions Case No. 292/1999. Prosecution has examined Ashok Kumar PW-2, Bhagirathi PW-3, Ajit Kumar PW-6 and Rajlal PW-11 as witnesses to whom the prosecutrix had narrated the incident immediately after the occurrence while returning from the forest. However, the testimony of the aforesaid witnesses is sharply contradictory by the testimony of Sukma Bai PW-7, mother of the prosecutrix who testified that on returning from the forest, the prosecutrix had told her that the appellant had caught hold of her hands. She has categorically stated that the prosecutrix did not tell anything further to her. Sukma Bai PW-7 being the mother of the prosecutrix, the incident, if any, would have certainly been narrated to her by the prosecutrix. Thus, in view of the

testimony of Sukma Bai PW-7 and statement of Ashok Kumar PW-2, Bhagirathi PW-3, Ajit Kumar PW-6 and Rajlal PW-11 is rendered unreliable.

7. So far as the evidence relating to extra judicial confession made by the appellant before Preetam Ram PW-1 is concerned, it is sharply contradicted by witness Ashok Kumar PW-2 who was present at the village meeting and stated that upon being asked the appellant had denied having committed any offence. Thus, the testimony of Preetam Ram PW-1 is also rendered unreliable. The medical evidence of Dr. Hemlata Sahu PW-12 also does not support the prosecution case since she found an old tear in the hymen and was not able to give any definite opinion about recent sexual intercourse having been committed on the prosecutrix.
8. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has failed to establish the guilt of the appellant under Section-376 of IPC beyond shadow of doubt. The appellant is therefore entitled to the benefit of doubt. The conviction and sentence imposed on the appellant therefore deserves to be set aside.

9. In the result, the appeal is allowed. The conviction of the appellant under Section-376 of IPC and the sentence awarded thereunder are set aside. The appellant is acquitted after giving him the benefit of doubt and shall be released forthwith, if not required in any other case. Fine if paid, shall be refunded to the appellant.

Sd/-  
Dilip Raosaheb Deshmukh  
Judge